

**BEFORE INDEPENDENT HEARINGS COMISSIONERS,
ON BEHALF OF CHRISTCHURCH CITY COUNCIL**

IN THE MATTER OF submissions of **25 KBR Limited** (Submissions 915.1 and 915.2) to
Proposed Plan Change 14 of the Christchurch District Plan

EVIDENCE OF PATRICIA HARTE ON BEHALF OF 25 KBR LIMITED

Planning
September 2023

Introduction

1. My name is Patricia Harte.
2. I am a Planner with Davie Lovell Smith Ltd.
3. I hold the qualifications of Bachelor of Laws and Master of Science (Resource Management).
4. I have over 35 years' experience as a planner working in the Christchurch, Selwyn, Waimate and Mackenzie districts. Of particular relevance to this evidence, I have prepared planning assessments and supporting evidence on a variety of residential rezonings and commercial developments both for private owners and councils including:
 - a) Northwood Supa Centre private plan change on behalf of the Christchurch City Council
 - b) South Point neighbourhood commercial development, Rolleston
 - c) Various greenfield residential rezonings in Selwyn and Waimakariri Districts
5. I have been a facilitator and drafter of numerous district plans primarily in the Canterbury Region. I have given evidence at many plan hearings and resource consents on behalf of councils and private clients at council and the environment Court hearings. I am also a hearing commissioner.

Submission of 25 KBR Limited

6. Our company has been engaged by the submitter, 25 KBR Limited (KBR) to assist in the planning and development of various blocks of land over the years, and most recently the block of land at 432 Sparks Road, shown below. KBR have now requested assistance with ensuring that their planned residential and discrete commercial development sites are appropriately zoned. In particular they wish to regain similar provisions that were available to them under the Residential New Neighbourhood zone rules relating to commercial use, which I describe in more detail in ?? of this evidence.

7. The submission of KBR has two elements which are connected, namely:

Supporting the change in zoning of the KBR land at 432 Sparks Road (and the adjoining general area) from Residential New Neighbourhood Zone to Future Urban Zone **subject to** an area of 7124m² within this site being rezoned for commercial/community use, namely rezoning as **Neighbourhood Centre Zone**.

Scope of evidence

8. My evidence is presented on behalf of KBR. It addresses the following matters:
- a) Request for commercial zoning 432 Sparks Road, Halswell
 - b) Planning provision for commercial use in greenfield residential developments
 - c) Issues raised in the Christchurch City Council Officer's section 42A report addressing Commercial matters.
9. In preparing this evidence I have reviewed:
- a) PC14 – relevant provisions contained in Plan Change 14 and its supporting documents;
 - b) The submissions and further submissions on PC14;
 - c) Relevant Council Officer's section 42A reports on Commercial and Industrial matters in PC14 (report 04)
 - d) The RMA documents that are relevant to PC14, including Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021

Code of conduct

10. I have read the Environment Court's Code of Conduct for Expert Witnesses, contained in Part 9 of the Environment Court Te Kōti Taiao o Aotearoa Practice Note 2023, and agree to comply with it. My qualifications as an expert are set out above. Other than where I state that I am relying on the advice of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Appropriate residential and commercial zoning/provision

11. The KBR site 432 Sparks Road (Lot 1 DP 581607) is currently zoned Residential New Neighbourhood. KBR are seeking to retain the key elements of this zoning which provides for greenfield residential development. Importantly, they wish to regain the right to have commercial zoning for their proposed neighbourhood commercial centre on proposed Lot 30 (7124m²) of this property. This proposed commercial site is Stage 1 of greenfield subdivision owned by this company and fronts Sparks Road. (refer attached subdivision consent plan) The remaining stages 2, 3 and 4 provide for 22 residential lots which will be accessed from a road running along the southern boundary of the site that ultimately connects to Sutherlands Road.
12. KBR have been planning for the establishment of a commercial/community development on the site for some time and have building and site plans, as well as number of keen tenants. The details of the commercial development have been provided with the KBR submission to PC14. The main features of the commercial/community development are:
- Restaurant
 - Several takeaway premises
 - Fruit and vegetable
 - Butcher
 - Medical centre and pharmacy
 - Small scale office space ,
 - Gymnasium
 - A community space
 - Village green and on-site parking
13. The current **Residential New Neighbourhood** (RNN) zoning in Residential Chapter 14, until recently, contained a flexible provision enabling the establishment and operation of local or neighbourhood shopping and community services. This provision was achieved by the following specific **permitted activity** in **rule 14.12.1.1**:

P20	All permitted activities in the Commercial Local Zone - Rule 15.5.1.1, within an area identified for this purpose on	d. The area identified for commercial activities shall not exceed 2,000m ² in gross floor area.
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	<p>an approved subdivision</p>	<p>e. Activities shall meet the following standards of the Commercial Local Zone:</p> <ul style="list-style-type: none"> i. Rule 15.5.2.1 Maximum building height ii. Rule 15.5.2.2 Building setback from road boundaries iii. Rule 15.5.2.3 Minimum building setback from residential zones iv. Rule 15.5.2.4 Sunlight and outlook with a residential zone v. Rule 15.5.2.5 Outdoor storage areas vi. Rule 15.5.2.6 Landscaping and trees vii. Rule 15.5.2.7 Water supply for fire fighting viii. Rule 15.5.2.8 Minimum building setback from railway corridor <p>The built form standards in Rule 14.12.2 do not apply.</p>
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Effectively this approach enabled a Commercial Local zoning over sites to be used for commercial purposes located within the RNN zone. The location of such sites had to be identified on a subdivision consent plan. This flexible approach was included through the Replacement Plan process, as many of the RNN OPDs include through that process had not been master planned. This approach was valued by residential greenfield developers for several reasons.

14. Firstly, it is not possible to know the best location for a commercial development until the road layout and passive access locations are finalised. It is therefore not practical to have a fixed location for commercial activities when land is originally zoned for greenfield development. Obtaining a subdivision consent for the land is therefore a very appropriate time for the commercial zoning to be put in place. Secondly, this approach provides certainty for commercial developers and tenants that they will be able to establish and operate without the need for resource consent. It also gives them flexibility over time to change activities within the commercial site. In this regard it is noted that the current Commercial Local zone provides a very wide range of activities including retail, commercial services,

offices, visitor accommodation, community facilities, schools and preschools, residential, emergency services and gyms. I understand this provision has been used by commercial/community development in Prestons.

15. Unfortunately this specific provision was removed from the RNN zone rules by Plan Change 5B which dealt with various commercial zone matters. More unfortunately, the description of the notified proposed plan change (PPC5B) did not make it clear that rule P20 was to be deleted. The Description and Headings with PPC5B only refer to Chapter 15 - Commercial of the District Plan, not Chapter 14 - Residential. As a result, greenfield developers who were potentially affected, did not realise that the last item in a very long list of amendments listed under the heading of Chapter 15 was deletion of rule 14.12.1.1 P20. They therefore did not make a submission to PPC5B. In addition to this lack of identification, The 42A report author appears to have incorrectly assumed that this rule only applied to the Prestons Road Outline Development Plan areas, which were to be rezoned by PC5B, when in fact this provision applies to **all RNN land**, much of which is in the Halswell area. Their reasoning is set out below:

xxi. Delete rules 14.12.1.1(P20) and 14.12.1.3 (RD22) as a consequence of rezoning the two commercial nodes in the Prestons Residential New Neighbourhood zone to Commercial Local zone (from 42A Report)

16. As a result of the incorrect wording of the notified PPC5B and the fact that no owners of RNN land were notified of the deletion of rule 14.12.1.1(P20) they have lost an important component of this zoning which provides a "user-friendly" pathway to establishing local/neighbourhood commercial and community activities to serve the surrounding residential areas. While the KBR submission will not restore the flexibility inherent in the previous RNN Permitted Activity approach it will at least provide for the proposed KBR development.

Assessment of proposed commercial zone at 432 Sparks Road

17. The KBR submission contains an assessment of the appropriateness of the proposed rezoning of Lot 1 for Neighbourhood Centre Zone. In summary:
- The proposal fulfils the role of a Neighbourhood Centre Zone as per Commercial Policy 15.2.2.1 which refers to "a small group of primarily convenience shops, and in some instances, community facilities. Accessible by walking, cycling from the area served and, on a bus route, in some instances".

- It is more efficient and appropriate in the long term to rezone the site for commercial/community use, rather than relying on a resource consent over time.
- The zoning and subsequent development will be valued by the local community and has been assessed as not resulting in adverse distributional effects.

18. The 04 Section 42A report addresses submissions to the Commercial elements of PC14. Mr Lightbody, the writer of the Commercial S42A report, concludes that the commercial zoning requested by KBR is appropriate given its location and its ability to serve the growing residential community in the area. He comments:

Notwithstanding this, the site is located on Sparks Road and is within a short walking distance of Halswell Road, where an existing local centre is located (Corner Sparks and Halswell Road). The rezoning of the subject land provides an opportunity for meeting the day-to-day needs of residents in the surrounding area, having regard to the significant growth experienced through greenfield subdivision. (Pg 45 para 8.1.63)

and

The rezoning of the subject land provides an opportunity for meeting the day to day needs of residents in the surrounding area, having regard to the significant growth experienced through greenfield subdivision. It is my opinion based on the provided information and how that information aligns with the objectives and policies of the CDP and CRPS that rezoning the sites commercial would be appropriate if deemed within a walking catchment.(Pg 143 Appendix 1 Item 7)

These statements conclude that the site and its proposed commercial/community use and zoning would be an asset for the community as it would provide for the day-to-day needs of the residential of the surrounding area.

However, contained in both these assessments is a reservation that the KBR submission may not be “within scope” of PC14. I address this matter below.

For completeness I mention that there are a number of other references in the 42A report referring to the KBR submissions 915.1 and 915.2:

- Page 30 4th item saying the rezoning would be “appropriate” but may be deemed out of scope
- Page 129 Rezoning requests 3rd item in table

Scope

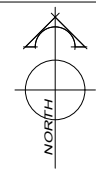
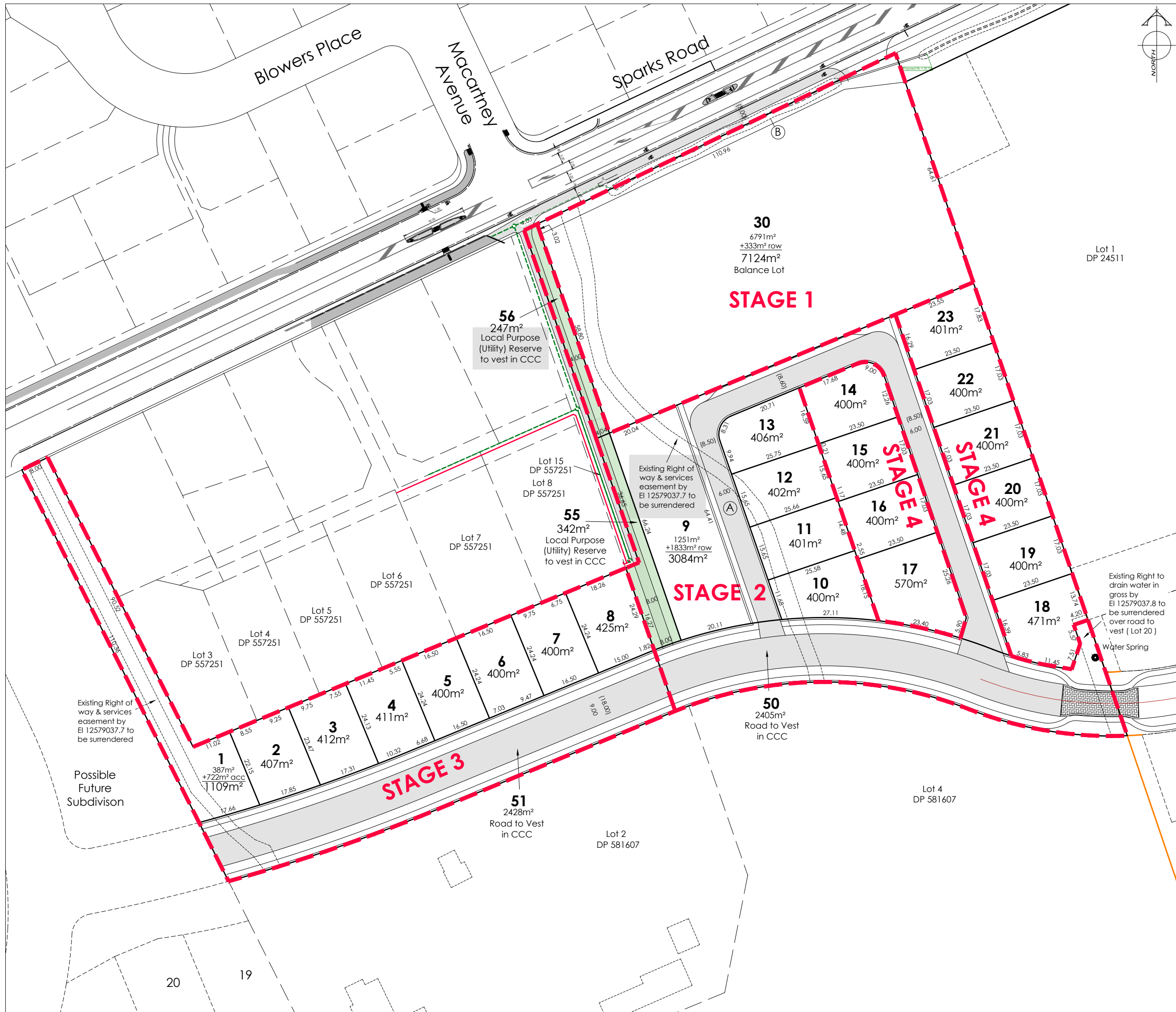
19. Mr Lightbody's concern that the KBR submission may be beyond scope appears to be based on the rather bizarre assumption that only land within a "walkable catchment" associated with various commercial zones is able to be rezoned in response to a submission request. On this basis he concludes that the KBR submission is probably out of "scope". This is despite the fact that PC14, in implementing MDRS and other requirements, significantly amends the residential zoning regime throughout the City, much of which does not relate to land within walkable catchments of the larger commercial centres. This is the situation with the rezoning of greenfield areas from RNN to Future Urban Zone in the Halswell area.
20. It is my understanding that the primary criterion developed over time through caselaw requires that a submission must *"reasonably fall within the ambit of the plan change by addressing the extent to which the plan change changes the pre-existing status quo"* that is that the *"management regime is altered by the plan change"*. This is referred to in Ms Oliver's report.
21. The KBR submission relates to land that has been rezoned by PPC14 and refers to the pre-existing situation where there was specific provision within the RNN rules providing for commercial/community developments within greenfield residential developments to be "given" Local Commercial zoning. While that provision was not in the very latest version of the RNN rules, there is a strong argument that the deletion of this provision by Plan Change 5B did not satisfy the "good practice" standards associated with plan changes with regard to clarity and notifying the public and greenfield owners of the proposed changes. On this basis it would seem that the KBR submission supporting the new Future Urban Zoning of 432 Sparks Road **subject to** specific zoning provisions for a commercial centre does address the pre-existing status-quo and so is within scope.
22. The "Waikanae" test is also referred to the 42A report based on whether a submission would create additional controls or restrictions would affect the status quo/pre-existing development rights. The KBR submission is effectively requesting to return to the previous development rights and so again is within scope.

Conclusion

23. I conclude that there is planning merit in rezoning the Lot 1 of the KBR site on Sparks Road, Halswell as Neighbourhood Centre Zone and that the submission is within scope of the Proposed Plan Change 14 as the land has been rezoned by this Plan Change.

P. Harte

19 September 2023



AMENDMENTS:		
AMENDMENT	DATE	DESCRIPTION

- NOTES:
- Areas and dimensions are approximate only and are subject to final survey and deposit of plans.
 - Service easements to be created as required.
 - This plan has been prepared for subdivision concept & discussion purposes only. No liability is accepted if the plan is used for any other purposes.

Proposed Memorandum of Easements

Nature	Servient Tenement (Burdened Land)		Dominant Tenement (Benefited Land)
	Lot No	Shown	
Right of way, rights to drain water & sewage & rights to convey gas, water, electricity & telecommunications.	9	A	Lots 10 - 23 & 30
Right of way in gross and rights to drain water in gross.	30	B	Grantee Christchurch City Council

Schedule of Areas

Description	Area
Residential Lots - (Lots 1-23)	1.2899ha
Road to vest in Christchurch City Council - (Lots 50 & 51)	4833m ²
Local Purpose (Utility) Reserve to vest in Christchurch City Council (Lots 55 & 56)	589m ²
Commercial Lot (Lot 30)	7124m ²

Total Area: 2.5453 ha

Comprised in: RT 1085206

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JOB TITLE: **Quarry Market**

SHEET TITLE: **Proposed Subdivision of Lot 1 DP 581607**

DRAWING STATUS: **For Consent Purposes**

SCALE: 1:500@A1 1:1000@A3 DATE: June 2023

CAD FILE: J:\20316\SUBCON\20316_Subcon R5.dwg DRAWN: JS
DRAWING No: **20316** SHEET No: 1 OF 1 REVISION: **R5**